were acquitted and discharged, this order purported to be made under section 30(4) of the Merchandise Marks Ordinance. Section 30 deals with compounding and while sub-section (4) states that compounding shall have the effect of an acquittal and discharge, it does not afford a legal foundation for the order made by the learned magistrate. The procedure adopted in this case is not that which is done where it is intended to compound a case. The practice has been for the prosecutor to apply to the court where the permission of the court is required or in other cases to inform the court that the parties have come to a settlement. No plea is recorded and the case is struck out. Where a plea is taken and the facts admitted the magistrate is bound under section 182(m)(ii) of the Criminal Procedure Code to pass sentence according to law. He may where there are extenuating and mitigating factors not record a conviction but he cannot acquit. With respect to the learned magistrate, I do not agree that there can ever be such a thing as "a qualified and not an unequivocal plea of guilt". I think the learned magistrate misdirected himself when he says "obviously the prosecution could not press for a deterrent sentence." It is not the usual practice anywhere for the prosecution to press for a deterrent sentence except in exceptional circumstances in the public interest to invite the court to consider imposition of a deterrent sentence. What is obvious here is that the prosecution had not ascertained whether the spurious product of the defendants contained any matter which is injurious to the skin. It is also not known whether the defendants had any previous convictions under the Merchandise Marks Ordinance as these offences are registrable under the Registration of Criminals Ordinance, 1948 (See L.N. 157 of 1951). The offence the defendants are charged with, namely under section 12 is registrable and that section makes the defendants guilty upon proof of possession unless:

(a) that, having taken all reasonable precautions against committing an offence under this section, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark; and that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or

(b) that otherwise he had acted innocently.

There is no mention of any assistance which has been rendered to the police. There is no question of the defendants having acted innocently (in fact, one of the terms of settlement is an undertaking not to misbehave). All these are matters which the court should have regard to in consenting to the compounding, and particularly if the public interest is affected. I would however say that it should be left to the discretion and good sense of the courts to have regard to the interests of both of the public and the parties, the circumstances and the nature of the offence in deciding whether to allow a case to be compounded. No question of law is therefore involved in the first question "whether the terms and the circumstances of the case permitted his making an order of acquittal and discharge of the defendants under section 30(4) of the Merchandise Marks Ordinance" as that invites me to lay down a general rule depending upon particular terms and facts. One thing is clear in law that the order of acquittal and discharge is contrary to section 182(m)(ii) of the Criminal Procedure Code and is further not authorised under section 30(4) of the Merchandise Marks Ordinance, which merely says that the compounding, if allowed, shall have the effect of an acquittal, so that if proceedings should be subsequently instituted upon the same facts, the defendants could plead *"autrefois acquit"*.

Before, however, I reverse the determination and set aside the order of acquittal and discharge, I would invoke sections 448 and 166 of the Criminal Procedure Code and amend the charge by substituting "3rd day of December, 1964" for the "12th day of November, 1964" and also by inserting before the words "Violet Talcum Powder" the word "Spurious". The respondents were represented and counsel agrees that they had not been misled by the error in stating the charge. I direct the charge as amended to be read to the respondents. They maintain the plea of guilty.

I convicted the defendants upon the charge as amended upon their own pleas of guilty. The order of acquittal and discharge made by the learned magistrate is hereby set aside. I bind them over in the sum of $500 each on his/her own surety to be of good behaviour for one year under section 290 Criminal Procedure Code. The order of forfeiture made under section 28(4) by the learned magistrate is altered to read under section 435 of the Criminal Procedure Code. There will also be an order for the disposal of the boxes and cellophane seized by the police.

Order accordingly.

BAN PET HOCK v. ONG AH HO

[O.C.J. (Choor Singh J.) November 4, 1966]

[Singapore — Suit No. 2150 of 1964]

Damages — Damages for personal injuries sustained in road accident — Whether interest should be allowed — Civil Law Ordinance (Cap. 24), s. 8.

In this case the plaintiff obtained damages for personal injuries suffered by him when he was knocked down by a lorry driven by the defendant. Counsel for the plaintiff applied under section 8 of the Civil Law Ordinance for interest on the sum awarded from the date of the accident till the date of judgment.

Held: on principle interest should not be allowed when damages are awarded in running-down cases.

Cases referred to:—

(1) *Sivarajan* v. *Swee Lam Estates (M) Ltd.* [1966] 1 M.L.J. xvii.

(2) *Kemp* v. *Tolland* [1956] 2 Lloyds Rep. 681.

CIVIL SUIT.

H. E. Cashin for the plaintiff.

Patrick Ong for the defendant.

Cur. Adv. Vult.

Choor Singh J.: In this action, the plaintiff claimed damages for personal injuries suffered by him on the 2nd June, 1963, when he was knocked down on Paya Lebar Road, Singapore, by a lorry driven by the defendant.

At the conclusion of the trial I awarded the plaintiff $500 as special damages and $8,000 as general damages and ordered the defendant to pay to the plaintiff the costs of this action as taxed. Counsel for the plaintiff then applied under section 8 of the Civil Law Ordinance (Cap. 24) for interest on the sum of $8,500 at 6% per annum from the date of the accident until the date of the judgment. Counsel argued that the plaintiff had been kept waiting for his money by the defendant and it was only fair that the plaintiff should receive interest on it at a fair rate. It was suggested that 6% per annum was fair and reasonable under the circumstances. It was said that the courts in Malaya had awarded interest on the amount of damages recovered in several running-down cases and that *Sivarajan* v. *Swee Lam Estates (M) Ltd.*[1] was one of them. It was also suggested that if the High Court in Singapore started awarding interest under section 8 of the Civil Law Ordinance on damages awarded in running-down cases, the insurance companies concerned would more readily settle claims in such cases and the work of the High Court would be considerably reduced.

Counsel for the defendant submitted that the damages awarded in the case were on the high side and that was a factor which the court must take into consideration in exercising its discretion in the matter of awarding interest. It was said that, on that account alone, this was not a suitable case for awarding interest on the amount of the damages that had been awarded to the plaintiff in this case.

Section 8 of the Civil Law Ordinance reads as follows:—

"8.—(1) In any proceedings tried in any court of record for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:

Provided that nothing in this section—

(a) shall authorise the giving of interest upon interest; or

(b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otheriwse; or

(c) shall affect the damages recoverable for the dishonour of a bill of exchange."

An identical provision is to be found in section 11 of the Civil Law Ordinance, 1956, of Malaya.

In England, section 3 of the Law Reform (Miscellaneous Provisions) Act, 1934, contains provisions identical in terms with section 8 of the Civil Law Ordinance of Singapore. It would appear that, subject to the provisos in the relevant provisions, the court's discretion to order interest when awarding damages is extremely wide. So far as is known, however, there are no English cases in torts affecting the person in which interest has been ordered to be paid on damages to the successful plaintiff under the provisions of the 1934 Act.

In *Sivarajan* v. *Swee Lam Estates (M) Ltd.*,[1] Azmi J. as he then was, "after having found the defendants solely liable for injuries sustained by the plaintiff from a motor accident, awarded damages and ordered that interest on the damages awarded be paid by the defendants to the plaintiff at the rate of 6% per annum from the date of the issue of the writ to the date of payment. Counsel for the plaintiff, who applied for interest under the provisions of R.S.C. 1957 O. 41 r. 11, based his claim on the 'iniquity of keeping the plaintiff out of the use of moneys legitimately due to him for an unconscionably long time'." Azmi J. in making the order, pointed out that there are a great many cases of this nature on the court lists and he would like to see greater efforts made towards reasonable settlement. Before making the order the learned judge had enquired from counsel whether they would be prepared to disclose if any offer had been made, and it was indicated to his Lordship that no offer whatsoever had been made by the defendants.

In the present case the reason given for claiming interest on the amount awarded as damages is that the plaintiff has been kept waiting for his money for a long time. In my opinion this is not a valid reason. The truth of the matter is that the amount of the damages which the defendant is ordered to pay to the plaintiff has to be paid by the insurance company with which the defendant's vehicle is insured. The insurance company cannot be held to have withheld any money at all from the plaintiff without the question of liability of the defendant having been first decided by the court and also without the amount of damages having been first assessed. The position in the case of a claim for damages for the tort of negligence is quite different from that in a case where the claim is for the recovery of the price of goods sold and delivered. In the latter case the defendant not

only knows that he is liable but also knows the extent of his liability and in such a case if he keeps the plaintiff waiting for his money, the court awards interest, as was said by Devlin J. in *Kemp* v. *Tolland*,[2] "on the simple commercial basis that if the money had been paid at the appropriate commercial time, the other side would have had the use of it". But in a running-down case unless and until the question of liability and the quantum of damages are settled by the court, there can be no question of withholding the plaintiff's money. And if there is a delay of 12 to 18 months or more between the commencement and the determination of the action, there is no reason why the insurance company should be penalised for a delay for which it is not responsible.

In my opinion, on principle, torts affecting the person do not require the award of interest in the damages. This view is supported by the learned author of *Mayne and McGregor* on Damages, 12th edition, who states, at page 275:—

"Torts affecting the person are in the nature of things not likely to require the award of interest in the damages. The rationale behind the awarding of interest as damages is that the plaintiff has not been given in contract, and has been deprived of in tort, a capital asset upon which he could earn interest. Thus the question of awarding interest can never arise where the damages awarded are for a non-pecuniary loss, and torts affecting the person form the home ground of recovery for non-pecuniary loss, whether pain and suffering, injury to feelings, injury to reputation. For all such damage no interest will be awarded. As to pecuniary loss, in so far as it constitutes prospective loss, which will generally form the main pecuniary loss, there should again be no award of interest on the damages, since the plaintiff could not have earned interest upon money or other remuneration which ex hypothesi he would not yet have acquired at the time of the action. The principal example of such a loss is the loss of impairment of earning capacity in cases of personal injury. A person's earning power can no doubt be regarded as a capital assets, but it is a capital asset relating, as it were, only to the future."

The learned author goes on to state that the position, in theory, is different in respect of a pecuniary loss which has already accrued at the time of the judgment, such as wages or salary which the plaintiff would have earned between the time of the accident and the time of the judgment or expenses already incurred such as medical expenses. It seems to me that, generally speaking, these sums are likely to be small and the interest involved would also be correspondingly small. But even here, it cannot be contended that the plaintiff has been kept out of his money, because the defendant cannot be said to be liable to pay compensation until the court so decides.

Although section 3 of the Law Reform (Miscellaneous Provisions) Act, 1934, became law in England over 30 years ago, there is not a single reported decision in which interest has been awarded in pursuance of that section on damages in a running down case. Nor for that matter has interest ever been awarded in such cases in Singapore although section 8 of the Civil Law Ordinance which was added by Ordinance 30 of 1940 came into force as far back as the 5th July, 1940.

For these reasons I am of the view that, there should be no award of interest under section 8 of the Civil Law Ordinance on damages awarded in running-down cases. The plaintiff's claim for interest on the amount awarded as damages in this case is accordingly dismissed.

Claim for interest dismissed.

Solicitors: *Murphy & Dunbar; Abishega-Naden & Co.*

TAY GEOK YAP & ANOR. v. COMMISSIONER OF STAMPS, SINGAPORE

[O.C.J. (Chua J.) May 30, 1966]

[Singapore — Special Case No. 1 of 1965]

Stamps — Ad valorem duty — Whether deed of agreement is a conveyance, assignment or transfer on sale of property — Meaning of "property" — Stamp Ordinance (Cap. 170), ss. 25(a) and 39.

In this case on the death of a deceased person letters of administration had been granted to the deceased's principal wife and his son. Subsequently a claim was made by one Tan Lian Cheow as one of the lawful widows of the deceased. The High Court found that she was the lawful widow and ordered letters of administration to be granted to her together with the other widow and the son. An appeal to the Federal Court was dismissed and conditional leave was given to appeal to the Privy Council. Subsequently the parties entered into a deed of agreement whereby the said Tan Lian Chew was in effect to receive $220,000 in consideration of renouncing all her rights and claim to the estate. The said deed was presented for assessment of stamp duty and the Commissioner of Stamps certified that it was chargeable with *ad valorem* duty of $4,400. The appellants were dissatisfied with the said assessment and appealed to the court against the assessment.

Held: the deed of agreement was a conveyance on sale of property within the meaning of the Stamp Ordinance in that it was intended to implement an agreement of sale of property and therefore attracted *ad valorem* duty.

Cases referred to:—

(1) *Potter* v. *Commissioners of Inland Revenue* 156 E.R. 392 at p. 396.

(2) *Oughtred* v. *Commissioners of Inland Revenue* [1960] A.C. 206.

SPECIAL CASE STATED.

M. Karthigesu for the appellant.

Amarjit Singh Verick (Legal Officer) for the respondent.

Cur. Adv. Vult.

Chua J.: This is a case stated by the Commissioner of Stamps under section 39 of the Stamp Ordinance (Cap. 170) (to which I will